

AMENDED IN SENATE APRIL 17, 2007

SENATE BILL

No. 1001

Introduced by Senator Perata

February 23, 2007

An act to amend ~~Section 13201~~ of Sections 13201 and 13205 of, and to add Sections 13194, 13230, and 13232 to, the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1001, as amended, Perata. California regional water quality control boards: membership *and program withdrawal*.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act, and the Porter-Cologne Water Quality Control Act (Porter-Cologne). Existing law designates the state board as the state water pollution control agency for all purposes stated in the federal Clean Water Act and any other federal act. Federal regulations provide for program revision and withdrawal and the voluntary transfer of program responsibilities when a state program no longer complies with the requirements of the federal Clean Water Act and the state fails to take corrective action.

This bill would make legislative findings and declarations related to the regional water boards and their responsibilities under the federal Clean Water Act and Porter-Cologne. The bill would require the state board to contract with the Department of Finance for the preparation of a detailed report on the financial basis and programmatic effectiveness of the state board's fee-based water quality programs.

The bill would require the state board to submit the report to the Governor and the Legislature on or before February 1, 2009. The bill would require the state board to prepare and adopt regulations for each regional board to ensure statewide compliance with state and federal water quality laws. At least every 3 years, the state board would be required to review and report to the Governor and Legislature on each regional board and its implementation of its water quality regulatory responsibilities.

The bill would authorize the state board to order the commencement of program withdrawal proceedings on its own initiative or in response to a petition from an interested person. If the state board concludes that a regional board has not administered water quality programs in conformity with the appropriate acts and regulations, the state board is required to list the deficiencies in the program, and provide the regional board a reasonable time to take corrective action. If the regional board fails to take the appropriate corrective action within the prescribed timeframe, the state board is required to either withdraw the regional board's program authority or set a schedule for review of program authority after a probationary period. The bill would specify that upon the withdrawal of a regional board's authority, the withdrawal order would state whether the state board or another regional board would become the implementing agency within the jurisdiction of the former regional board.

~~The~~

(2) *The Porter-Cologne Water Quality Control Act establishes 9 regions for the purposes of the act, each governed by a California regional water quality control board of 9 members appointed by the Governor, with prescribed experience or associations. The act requires that each regional board member represent and act on behalf of all the people and reside or have a principal place of business within the region. Under the act, if an appointment cannot be made for the county government member because of a restriction under existing law on income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements, the act authorizes the appointment of persons not specifically associated with any category.*

This bill would revise those provisions to establish regional boards of 5 members, with positions for members with a degree or prescribed experience in biological science, public sector finance, urban planning, public health, and environmental justice. Each member would be

required to be appointed on the basis of his or her demonstrated interest and proven ability in the field of water pollution control and understanding of the water pollution problems in their region and his or her ability to attend substantially all meetings of the regional board, and to actively discharge all duties and responsibilities of a member of the regional board. If an appointment cannot be made in accordance with those requirements for specified experience, the bill would require the appointment of a person who possesses at least 10 years of experience in improving water quality.

(3) Existing law provides that each member of a regional board receive \$100 for each day that member is engaged in the performance of official duties, except as specified, and that the total compensation received by members of each regional board not exceed, in any one fiscal year, the sum of \$13,500.

This bill would provide that each regional board member receive \$500 for each day that member is engaged in the performance of official duties. The bill would specify that the total compensation received by members not exceed \$30,000.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature hereby finds and declares all of*
2 *the following:*
3 *(a) The 1949 Dickey Water Pollution Act established nine*
4 *regional water boards located in each of the major California*
5 *watersheds. The regional boards have primary responsibility for*
6 *overseeing and enforcing the state's pollution abatement programs.*
7 *The act established five gubernatorial appointees, representing*
8 *water supply, irrigated agriculture, industry, and municipal and*
9 *county government in that region, to serve on each regional water*
10 *board. This number has since grown to nine members and includes*
11 *a public member seat, two members with special competence in*
12 *water quality, and a seat for a member associated with a*
13 *recreation, fish, or wildlife nongovernmental organization.*
14 *(b) The complexity of water quality and water supply laws and*
15 *technologies in the intervening 58 years has grown exponentially,*
16 *while the expertise and low pay on the regional boards have*
17 *remained relatively constant. The significant complexity of*

1 *problems and laws brings an increased need for expertise on the*
2 *regional board, yet the substantive requirements for the regional*
3 *board member position have not similarly increased. The large*
4 *number of appointments (91 regional board members) makes*
5 *tracking the members' performance difficult, heightening the need*
6 *for the clear, strong expertise of each board member.*

7 *(c) The Clean Water Act (33 U.S.C. Sec. 1252 et seq.) envisions*
8 *delegation of water pollution control responsibility to the states.*
9 *Federal regulations establish procedures for approving a state*
10 *program and the responsibilities of that program. Provisions for*
11 *withdrawal of that authority are found at Section 123.63 of Part*
12 *40 of the Code of Federal Regulations and state that the United*
13 *States Environmental Protection Agency may withdraw federal*
14 *approval when a state program no longer complies with the*
15 *requirements of Clean Water Act and the state fails to take*
16 *corrective action. These circumstances include the state's failure*
17 *to issue permits, act on violations of permits or other program*
18 *requirements, seek adequate enforcement penalties or to collect*
19 *administrative fines when imposed, inspect and monitor activities*
20 *subject to regulation, or develop an adequate regulatory program*
21 *for developing water quality-based effluent limits in National*
22 *Pollution Discharge Elimination System permits.*

23 *(d) The Porter-Cologne Water Quality Control Act (Division 7*
24 *commencing with Section 13000 of the Water Code) designates*
25 *the state board as the state water pollution control agency for all*
26 *purposes stated in the Clean Water Act and any other federal act.*
27 *Section 13260 of the act places responsibility on the regional*
28 *boards for ensuring that waste discharge reports are filed by any*
29 *person discharging, or proposing to discharge waste in any region*
30 *that could affect the quality of "waters of the state," and that*
31 *appropriate regulatory action is taken after the filing of the reports.*
32 *The act defines "waters of the state" as "any surface water or*
33 *groundwater, including saline waters, within the boundaries of*
34 *the state."*

35 *(e) California is the only state in the nation with autonomous*
36 *regional water boards that implement the Clean Water Act*
37 *program requirements.*

38 *(f) Numerous state and federal mandates are not being met in*
39 *California. They include the following:*

1 *(1) Section 305(b) of the Clean Water Act requires each state*
2 *to prepare a water quality report at least every two years;*
3 *California has not submitted a report to the United States*
4 *Environmental Protection Agency since 2002. Moreover, despite*
5 *the mandate that all waters are to be assessed, the 2002 document*
6 *reports only on the health of a third of the state's lakes and*
7 *reservoirs, 22 percent of the state's coastal shoreline miles, and*
8 *a mere 15 percent of river and stream miles.*

9 *(2) Although Porter-Cologne requires the regional boards to*
10 *regulate all discharges to surface water or groundwater that*
11 *"could affect the quality of the waters of the state," every one of*
12 *the regional boards has failed to regulate one or more major*
13 *sources of polluted runoff into surface water, and there is virtually*
14 *no such regulation of discharges to groundwater. As a result,*
15 *polluted runoff is implicated in more than 76 percent of the waters*
16 *identified as "impaired" in California.*

17 *(3) The state has established approved cleanup plans for only*
18 *a handful of the water bodies listed as "impaired" for one or more*
19 *pollutants, and only a small fraction of those waters have since*
20 *been deemed "clean." Many of these listings will not have cleanup*
21 *plans before 2019, with no deadlines set for actual cleanup of the*
22 *waters listed.*

23 *(4) A February 2000 report by the Legislative Analysts' Office*
24 *identified numerous deficiencies in permit issuance, inspections,*
25 *inconsistencies in enforcement across the state, inadequate*
26 *enforcement followup, and other problems, most of which continue*
27 *today.*

28 *(5) An August 2006 state board enforcement report to the*
29 *Legislature concluded that the water board staff does not detect*
30 *violations for several months after they occur and showed*
31 *significantly variable numbers of enforcement actions and violation*
32 *rates across regional water boards.*

33 *SEC. 2. Section 13194 is added to the Water Code, to read:*

34 *13194. The state board shall contract with the Department of*
35 *Finance for the preparation of a detailed report, which shall be*
36 *submitted on or before February 1, 2009, to the Governor and the*
37 *Legislature, on the financial basis and programmatic effectiveness*
38 *of the state board's fee-based water quality programs, with a*
39 *particular focus on the Waste Discharge Permit Fund. This report*
40 *shall include an analysis of all major expenditures, the amount*

1 *and adequacy of fees and fines collected, the amount and adequacy*
2 *of staffing and equipment levels, and other relevant issues. The*
3 *report shall also identify at the state board and regional board*
4 *level, for both surface water and groundwater, those state and*
5 *federal water quality mandates that may be supported through*
6 *fees for which fees are either not being assessed, or are not being*
7 *assessed at levels necessary to implement the mandates as required*
8 *by law. The report shall recommend measures to improve the*
9 *efficiency and effectiveness of the state board's fee-based water*
10 *quality programs, including, but not limited to, measures to*
11 *establish required surface water and groundwater, and to ensure*
12 *adequate and equitable funding for all programs.*

13 **SECTION 1.**

14 **SEC. 3.** Section 13201 of the Water Code is amended to read:

15 13201. (a) There is a regional board for each of the regions
16 described in Section 13200. Each board shall consist of the
17 following five members appointed by the Governor, each of whom
18 shall represent and act on behalf of all the people and shall reside
19 or have a principal place of business within the region:

20 (1) One person who holds at least a master's degree in biological
21 science, such as biology or ecology, with preferred experience in
22 aquatic biology or ecology.

23 (2) One person who has experience with public sector finance,
24 with preferred experience with water quality or watershed
25 improvement projects.

26 (3) One person who holds at least a master's degree in urban
27 planning or a closely related discipline, with preferred experience
28 with programs for achieving water quality objectives.

29 (4) One person who holds at least a master's degree in public
30 health, with preferred expertise concerning the health consequences
31 of impaired water quality.

32 (5) One person who has experience representing an
33 environmental justice community, with preferred knowledge about
34 the impact of water quality on low-income communities.

35 (b) Each member shall be appointed on the basis of his or her
36 demonstrated interest and proven ability in the field of water
37 pollution control and understanding of the water pollution problems
38 in their region.

39 (c) Each member shall be appointed on the basis of his or her
40 ability to attend substantially all meetings of the regional board,

1 and to actively discharge all duties and responsibilities of a member
2 of the regional board.

3 (d) All persons appointed to a regional board are subject to
4 Senate confirmation, but are not be required to appear before any
5 committee of the Senate for purposes of such confirmation, unless
6 specifically requested to appear by the Senate Committee on Rules.

7 (e) Insofar as practicable, appointments shall be made in such
8 manner as to result in representation on the board from all parts
9 of the region.

10 (f) Notwithstanding subdivision (a), if an appointment cannot
11 be made in accordance with subdivision (a), the appointment shall
12 be made of a person who possesses at least 10 years of experience
13 in improving water quality.

14 ~~SEC. 2:~~

15 *SEC. 4.* The reduction in the number of members on each
16 regional board required by subdivision (a) of Section 13201 of the
17 Water Code, *as amended by Senate Bill 1001 of the 2007–08*
18 *Regular Session of the Legislature*, shall be achieved according to
19 the ordinary expiration of terms of incumbents and other vacancies.
20 After a regional board consists of only five members, an individual
21 subsequently appointed to fill a vacancy shall possess the
22 qualifications specified in Section 13201 of the Water Code.

23 *SEC. 5. Section 13205 of the Water Code is amended to read:*

24 13205. Each member of a regional board shall receive ~~one~~
25 ~~hundred dollars (\$100)~~ *five hundred dollars (\$500)* for each day
26 during which that member is engaged in the performance of official
27 duties, *including preparation for regional board meetings*, except
28 that no member shall be entitled to receive the ~~one hundred dollars~~
29 ~~(\$100)~~ *five hundred dollars (\$500)* compensation if the member
30 otherwise receives compensation from other sources for performing
31 those duties. The total compensation received by members of each
32 regional board shall not exceed, in any one fiscal year, the sum of
33 ~~thirteen thousand five hundred dollars (\$13,500)~~ *thirty thousand*
34 *dollars (\$30,000)*. A member may decline compensation. *The*
35 *annual compensation provided by this section shall be increased*
36 *in any fiscal year in which a general salary increase is provided*
37 *for state employees. The amount of the increase provided by this*
38 *section shall be comparable to, but shall not exceed, the percentage*
39 *of the general salary increases provided for state employees during*
40 *that fiscal year.* In addition to the compensation, each member

1 shall be reimbursed for necessary traveling and other expenses
2 incurred in the performance of official duties.

3 *SEC. 6. Section 13230 is added to the Water Code, to read:*

4 *13230. (a) The state board shall prepare and adopt regulations*
5 *that each regional board shall meet to ensure statewide compliance*
6 *with the requirements of both state and federal water quality laws.*
7 *The requirements shall reflect those requirements for program*
8 *approval under the Clean Water Act (33 U.S.C. Sec. 1251 et seq.)*
9 *and federal regulations (Section 123.1 of Title 40 of the Code of*
10 *Federal Regulations et seq.), as well as the mandates of the*
11 *Porter-Cologne Water Quality Control Act (Division 7*
12 *(commencing with Section 13000)) and state regulations.*

13 *(b) At least every three years, the state board shall review, and*
14 *report to the Governor and the Legislature, on each regional board*
15 *and its implementation of its water quality regulatory*
16 *responsibilities. The state board's review shall include periodic*
17 *state board inspections of facilities within the jurisdiction of each*
18 *regional board for the purpose of evaluating whether the regional*
19 *board is appropriately applying and enforcing state and federal*
20 *law, and state standards as described in subdivision (a).*

21 *(c) If the state board determines through its triennial reviews*
22 *that key requirements are in not being met by regional boards*
23 *across the state, the state board shall include in its report and*
24 *implement recommendations for statewide guidance, policy or*
25 *trainings that are needed to address these deficiencies.*

26 *SEC. 7. Section 13232 is added to the Water Code, to read:*

27 *13232. (a) (1) The state board may order the commencement*
28 *of program withdrawal proceedings on its own initiative or in*
29 *response to a petition from an interested person alleging the failure*
30 *of a regional board to comply with the requirements of*
31 *Porter-Cologne or the federal Clean Water Act. These*
32 *circumstances include, but are not limited to, the following:*

33 *(A) Failure to exercise adequate control over activities required*
34 *to be regulated under applicable state or federal law, including*
35 *failure to issue permits, waste discharge requirements or waivers*
36 *of waste discharge requirements.*

37 *(B) Repeated issuance of permits, waste discharge requirements,*
38 *or waivers or waste discharge requirements that do not conform*
39 *to the requirements of applicable state or federal law.*

1 (C) *Failure to conduct adequate oversight over discharges*
2 *subject to memoranda of agreement or understanding with other*
3 *agencies*

4 (D) *Failure to comply with the public participation requirements*
5 *of applicable state or federal law.*

6 (E) *Failure to meet the discharger identification, inspection,*
7 *penalty enforcement, and other requirements of the regional*
8 *board's enforcement program.*

9 (F) *Failure to develop an adequate regulatory program for*
10 *developing water quality-based effluent limits in National Pollution*
11 *Discharge Elimination System permits.*

12 (2) *The state board shall respond in writing to any petition to*
13 *commence regional board program withdrawal proceedings, and*
14 *may conduct an informal investigation of the allegations in the*
15 *petition to determine whether cause exists to commence*
16 *proceedings under this section. The state board's order*
17 *commencing proceedings under this section shall fix a time and*
18 *place for the commencement of the hearing and shall specify the*
19 *allegations against the regional board that are to be considered*
20 *at the hearing. Within 30 days the regional board shall admit or*
21 *deny these allegations in a written answer. The party seeking*
22 *withdrawal of the regional board's program shall have the burden*
23 *of producing the evidence in a hearing under this paragraph.*

24 (b) *If the state board concludes that the regional board has not*
25 *administered mandated state and federal water quality programs*
26 *in conformity with the appropriate acts and regulations, the state*
27 *board shall list the deficiencies in the program or programs and*
28 *provide the regional board a reasonable time, not to exceed 90*
29 *days, to take such appropriate corrective action as the state board*
30 *determines necessary.*

31 (c) *Corrective actions shall include specific requirements for*
32 *issuing permits, conducting more frequent inspections and*
33 *evaluations, and taking additional enforcement actions, in addition*
34 *to other actions necessary for improving regional board*
35 *performance.*

36 (d) *Within the timeframe prescribed by the state board, the*
37 *regional board shall take such appropriate corrective action as*
38 *required by the state board, and shall file with the state board and*
39 *all parties a statement certified by the regional board that*
40 *appropriate corrective action has been taken and that funding has*

1 *been established to support continuation of each corrective action,*
2 *as needed. The state board may require a further showing in*
3 *addition to the certified statement.*

4 *(e) If the regional board fails to take the appropriate corrective*
5 *action and file a certified statement within the timeframe prescribed*
6 *by the state board, the state board shall issue a supplementary*
7 *order that either withdraws the regional board's program*
8 *authority, or sets a schedule for review of program authority after*
9 *a probationary period during which additional corrective actions*
10 *shall be required.*

11 *(f) During the probationary period, the state board or another*
12 *regional board shall assume partial or total responsibility for the*
13 *specified regional board's duties.*

14 *(g) If at the conclusion of the probationary period, the regional*
15 *board has taken and certified appropriate corrective action, the*
16 *state board shall issue a supplementary order stating that the*
17 *regional board's authority to implement state and federal law is*
18 *not withdrawn.*

19 *(h) (1) If, at the end of the probationary period, or the end of*
20 *the state board's withdrawal proceedings if there is no*
21 *probationary period, the state board determines that the regional*
22 *board has not met the criteria outlined in Section 13230, the state*
23 *board shall withdraw authority from the regional board,*
24 *notwithstanding the Porter-Cologne Water Quality Control Act*
25 *(Division 7 (commencing with Section 13000)). The withdrawal*
26 *order shall state whether the state board, or another regional*
27 *board, or both, shall become the implementing agency within the*
28 *jurisdiction of the former regional board.*

29 *(2) Withdrawal of authority shall continue until the regional*
30 *board makes, in a public hearing, certified demonstrations*
31 *necessary to ensure immediate and continued compliance with*
32 *applicable state and federal law, in accordance with the criteria*
33 *established under subdivision (a) of Section 13230.*

34 *(i) Withdrawal of authority under this section does not relieve*
35 *any person from complying with the requirements of state or*
36 *federal law, nor does it affect the validity of actions by the state*
37 *prior to withdrawal.*

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